

RESPONSE

A. Status of the Claims

Claims 23-52 were pending at the time of the Restriction Requirement, with claims 1-22 having been canceled in the Preliminary Amendment filed with the application. All of claims 23-52 read on and are generic to the elected invention and species. Therefore, claims 23-52 are presently under consideration in the case.

B. Response to Restriction Requirement

In response to the restriction requirement, Applicants elect, *with traverse*, to prosecute invention as it relates to SEQ ID NO:13 (Ppact5 5').

Applicants contend, without prejudice, that all of the “inventions” indicated in the Restriction Requirement, should be examined in the instant application, for the reasons below.

As an initial point, Applicants note that the instant application is a nationalization of a PCT application. Therefore, the PCT Rules and the unity of invention standard apply to the present case. Under these standards, all of the content of the present claims relate to a single general inventive concept as required by PCT Rule 13.1, because they all contain the same or corresponding special technical features as required by PCT Rule 13.2. In this case, all of the claims and all of the sequences relate to isolated nucleic acid molecule encoding a wild-type, nucleus-derived moss expression promoting region (MEPR).

Applicants point out that the Restriction Requirement completely fails to meet the USPTO's burden of establishing why restriction between the claims is proper under the PCT Rules. Therefore, the Restriction Requirement is insufficient as a matter of law and procedure. The Restriction Requirement contains merely bald statements and does not explain why the listed inventions would not share at least one special technical feature. Additionally, the Examiner does not base the Restriction Requirement on any prior art document which would

confirm that a special technical feature does not exist between the claims. In fact, Applicants would point out that, to their current knowledge, there are no a wild-type, nucleus-derived moss expression promoting regions (MEPRs) disclosed in the prior art. Therefore, there is no evidence of record to dispute that there is a common inventive feature between the claims, and the Restriction Requirement must be withdrawn.

In view of the above, the “inventions” set forth in the Restriction Requirement have a common inventive concept as required by PCT Rule 13.2, and Applicants request withdrawal of the Restriction Requirement and examination of all pending claims in the present case.

Additionally, examination of all of the currently claimed subject matter should be performed together because a corresponding search would not present a “serious burden” on the examiner. MPEP § 803 (“If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions”). Given the fact that there is a common inventive concept between the all of the present claims, Applicants submit that there is no “serious burden” in examining all of the currently claimed subject matter together in this case. Further, the examiner has provided no evidence of any serious burden.

In traversing the restriction requirement on the grounds set forth above, Applicants specifically take no position with regard to whether any sets of the present claims or any individual present claims are or are not patentably distinct from any other set of claims or individual claim. Rather, Applicants argue without acquiescence that, under the circumstances of this case and in view of the applicable PCT rules and statements of the MPEP, the stated restriction is not proper, whether those claims are patentably distinct or not. Such arguments do not create an estoppel against Applicants and are not an admission that the restricted Groups are either patentably distinct or patentably indistinct from one another.

In view of the above, Applicants request withdrawal of the Restriction Requirement and examination of the full scope of the pending claims in the present case.

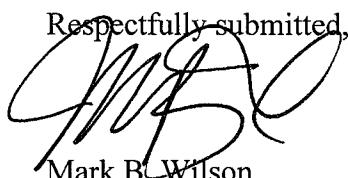
C. Response to Species Election Requirement

The examiner has also entered a species election requirement. Applicants elect DNA sequences from and cells of *Physocomitrella* as the species for prosecution. All of currently pending claims 23-52 read on and are generic to the elected species.

Applicants reserve all rights to reintroduce non-elected species in the event of allowance of a generic claim.

D. Conclusion

Applicants believe this paper to be a full and complete response to the Restriction Requirement dated May 23, 2007. Applicants respectfully request favorable consideration of this case in view of the above comments and amendments. Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicants' representative at (512) 536-3035.

Respectfully submitted,


Mark B. Wilson
Reg. No. 37,259
Attorney for Applicants

CUSTOMER NO. 32425
FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
512.536.3035 (voice)
512.536.4598 (fax)

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